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PRODUCTIONS CO., LTD.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UM CORPORATION, a Japanese
corporation,

Plaintiff,

vs.

TSUBURAYA PRODUCTIONS CO.,
LTD., a Japanese corporation,

Defendant.

CASE NO. 2:15-cv-03764-AB-AJW

**TSUBURAYA PRODUCTIONS CO.,
LTD.'S ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIMS FOR:**

**1. COPYRIGHT INFRINGEMENT
2. DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 TSUBURAYA PRODUCTIONS CO.,
2 LTD., a Japanese corporation,

3
4 Counterclaimant,

5 vs.

6 UM CORPORATION, a Japanese
7 corporation; ULTRAMAN USA, INC.,
8 a California corporation; SOMPOTE
9 SAENGDUENCHAI, a Thai individual;
10 GOLDEN MEDIA GROUP, INC., a
11 California corporation; TIGA
12 ENTERTAINMENT COMPANY,
13 LTD., a Hong Kong corporation; and
14 DOES 1-10,

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16 Counterdefendants.
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Assigned to: Hon. André Birotte, Jr.
Trial Date: None Set

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ANSWER

Defendant TSUBURAYA PRODUCTIONS CO., LTD. (“Tsuburaya”), by and through its counsel, answers the Complaint of plaintiff UM CORPORATION (“Plaintiff”) as follows. Unless specifically admitted herein, Tsuburaya denies each of the allegations of Plaintiff’s Complaint and specifically denies that Plaintiff is entitled to any relief whatsoever.

1. Answering paragraph 1 of the Complaint, Tsuburaya admits that it claims intellectual property rights in works based on the superhero Ultraman, is without knowledge or information sufficient to form a belief as to the authenticity of the images depicted in purported Figures 1 and 2 and thus denies the same, and denies the truth of the remaining allegations set forth therein. Tsuburaya further denies that Plaintiff has any rights in any Ultraman works in the United States or that Tsuburaya has violated any such alleged rights.

2. Answering paragraph 2 of the Complaint, Tsuburaya is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth therein and, on that basis, denies them.

3. Answering paragraph 3 of the Complaint, Tsuburaya is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth therein and, on that basis, denies them.

4. Answering paragraph 4 of the Complaint, Tsuburaya admits that it is a corporation incorporated under the laws of Japan, with its principal place of business in Tokyo, Japan, that it engages in the business of developing, producing, distributing, and selling motion pictures, among other works, and denies the truth of the remaining allegations set forth therein.

5. Answering paragraph 5 of the Complaint, Tsuburaya admits only for purposes of this action that this Court may exercise personal jurisdiction over it, and denies the truth of the remaining allegations set forth therein.

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1 6. Answering paragraph 6 of the Complaint, Tsuburaya admits that this
2 Court has subject-matter jurisdiction over the Copyright Act claims in this action
3 pursuant to 28 U.S.C. §§ 1331 and 1338, and denies the truth of the remaining
4 allegations set forth therein.

5 7. Answering paragraph 7 of the Complaint, Tsuburaya admits only for
6 purposes of this action that venue is proper in this district, and denies the truth of the
7 remaining allegations set forth therein.

8 8. Answering paragraph 8 of the Complaint, Tsuburaya admits the
9 allegations set forth therein, but denies the truth of the allegation made in Plaintiff's
10 bold-text heading set forth immediately above paragraph 8.

11 9. Answering paragraph 9 of the Complaint, Tsuburaya denies the truth of
12 the allegations set forth therein.

13 10. Answering paragraph 10 of the Complaint, Tsuburaya denies the truth
14 of the allegations set forth therein.

15 11. Answering paragraph 11 of the Complaint, Tsuburaya is without
16 knowledge or information sufficient to form a belief as to the truth or falsity of the
17 allegations set forth therein and, on that basis, denies them. Tsuburaya further
18 denies that Plaintiff has any rights in any Ultraman works in the United States or
19 that Tsuburaya has violated any such alleged rights.

20 12. Answering paragraph 12 of the Complaint, Tsuburaya is without
21 knowledge or information sufficient to form a belief as to the truth or falsity of the
22 allegations set forth therein and, on that basis, denies them. Tsuburaya further
23 denies that Plaintiff has any rights in any Ultraman works in the United States or
24 that Tsuburaya has violated any such alleged rights.

25 13. Answering paragraph 13 of the Complaint, Tsuburaya denies the truth
26 of the allegations set forth therein.

27 14. Answering paragraph 14 of the Complaint, Tsuburaya is without
28 knowledge or information sufficient to form a belief as to the truth or falsity of the

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1 allegations set forth therein and, on that basis, denies them, and further denies the
2 truth of the allegation made in Plaintiff's bold-text heading set forth immediately
3 above paragraph 14.

4 15. Answering paragraph 15 of the Complaint, Tsuburaya is without
5 knowledge or information sufficient to form a belief as to the truth or falsity of the
6 allegations set forth therein and, on that basis, denies them.

7 16. Answering paragraph 16 of the Complaint, Tsuburaya is without
8 knowledge or information sufficient to form a belief as to the truth or falsity of the
9 allegations set forth therein and, on that basis, denies them.

10 17. Answering paragraph 17 of the Complaint, Tsuburaya is without
11 knowledge or information sufficient to form a belief as to the truth or falsity of the
12 allegations set forth therein and, on that basis, denies them.

13 18. Answering paragraph 18 of the Complaint, Tsuburaya is without
14 knowledge or information sufficient to form a belief as to the truth or falsity of the
15 allegations set forth therein and, on that basis, denies them.

16 19. Answering paragraph 19 of the Complaint, Tsuburaya is without
17 knowledge or information sufficient to form a belief as to the truth or falsity of the
18 allegations set forth therein and, on that basis, denies them.

19 20. Answering paragraph 20 of the Complaint, Tsuburaya is without
20 knowledge or information sufficient to form a belief as to the truth or falsity of the
21 allegations set forth therein and, on that basis, denies them.

22 21. Answering paragraph 21 of the Complaint, Tsuburaya is without
23 knowledge or information sufficient to form a belief as to the truth or falsity of the
24 allegations set forth therein and, on that basis, denies them, and specifically denies
25 the truth of the allegation made in Plaintiff's bold-text heading set forth immediately
26 above paragraph 21.

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1 22. Answering paragraph 22 of the Complaint, Tsuburaya is without
2 knowledge or information sufficient to form a belief as to the truth or falsity of the
3 allegations set forth therein and, on that basis, denies them.

4 23. Answering paragraph 23 of the Complaint, Tsuburaya is without
5 knowledge or information sufficient to form a belief as to the truth or falsity of the
6 allegations set forth therein and, on that basis, denies them.

7 24. Answering paragraph 24 of the Complaint, Tsuburaya denies that it is
8 illegally airing any works, and is without knowledge or information sufficient to
9 form a belief as to the truth or falsity of the remaining allegations set forth therein
10 and, on that basis, denies them.

11 25. Answering paragraph 25 of the Complaint, Tsuburaya admits that on
12 September 13, 2014, Kei Minamitani, an employee of Tsuburaya, sent an e-mail
13 message to Randall Green asserting Tsuburaya's rightful ownership of all
14 intellectual property rights in the ULTRA Q television series, and denies the truth of
15 the remaining allegations set forth therein.

16 26. Answering paragraph 26 of the Complaint, Tsuburaya admits the
17 allegations set forth therein.

18 27. Answering paragraph 27 of the Complaint, Tsuburaya admits that on
19 October 22, 2014, Shinichi Ooka, a representative of Tsuburaya, sent a letter to
20 Randall Green denying any purported legal authority of Veranda and Plaintiff to
21 exploit works based on the Ultraman superhero and asserting Tsuburaya's rights to
22 the Ultraman superhero, and denies the truth of the remaining allegations set forth
23 therein.

24 28. Answering paragraph 28 of the Complaint, Tsuburaya admits that it has
25 broadly asserted ownership rights in intellectual property based on the Ultraman
26 superhero worldwide, and denies the truth of the remaining allegations set forth
27 therein.

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29. Answering paragraph 29 of the Complaint, Tsuburaya is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth therein and, on that basis, denies them.

30. Answering paragraph 30 of the Complaint, Tsuburaya is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth therein and, on that basis, denies them.

31. Answering paragraph 31 of the Complaint, Tsuburaya admits that Plaintiff has purported to license and exploit Ultraman works in the United States, and is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth therein and, on that basis, denies them.

32. Answering paragraph 32 of the Complaint, Tsuburaya is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth therein and, on that basis, denies them. Tsuburaya further denies that Plaintiff has any rights in any Ultraman works in the United States or that Tsuburaya has violated any such alleged rights.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 501 et seq.

33. Answering paragraph 33 of the Complaint, Tsuburaya incorporates herein by reference its responses to the allegations in paragraphs 1 through 32 of the Complaint as though fully set forth herein.

34. Answering paragraph 34 of the Complaint, Tsuburaya is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth therein and, on that basis, denies them.

35. Answering paragraph 35 of the Complaint, Tsuburaya denies the truth of the allegations set forth therein.

36. Answering paragraph 36 of the Complaint, Tsuburaya denies the truth of the allegations set forth therein.

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1 37. Answering paragraph 37 of the Complaint, Tsuburaya denies the truth
2 of the allegations set forth therein, and specifically denies that Plaintiff has any
3 rights in any Ultraman works in the United States or that Tsuburaya has violated any
4 such alleged rights.

5 38. Answering paragraph 38 of the Complaint, Tsuburaya denies the truth
6 of the allegations set forth therein, and specifically denies that Plaintiff has any
7 rights in any Ultraman works in the United States or that Tsuburaya has violated any
8 such alleged rights.

9 39. Answering paragraph 39 of the Complaint, Tsuburaya denies the truth
10 of the allegations set forth therein, and specifically denies that Plaintiff is entitled to
11 any relief whatsoever.

12 40. Answering paragraph 40 of the Complaint, Tsuburaya denies the truth
13 of the allegations set forth therein, and specifically denies that Plaintiff is entitled to
14 any relief whatsoever.

15 41. Answering paragraph 41 of the Complaint, Tsuburaya denies the truth
16 of the allegations set forth therein, and specifically denies that Plaintiff is entitled to
17 any relief whatsoever.

18 **SECOND CAUSE OF ACTION**

19 **BREACH OF CONTRACT**

20 42. Answering paragraph 42 of the Complaint, Tsuburaya incorporates
21 herein by reference its responses to the allegations in paragraphs 1 through 41 of the
22 Complaint as though fully set forth herein.

23 43. Answering paragraph 43 of the Complaint, Tsuburaya denies the truth
24 of the allegations set forth therein.

25 44. Answering paragraph 44 of the Complaint, Tsuburaya denies the truth
26 of the allegations set forth therein.

27 45. Answering paragraph 45 of the Complaint, Tsuburaya denies the truth
28 of the allegations set forth therein.

1 46. Answering paragraph 46 of the Complaint, Tsuburaya denies the truth
2 of the allegations set forth therein, and specifically denies that Plaintiff is entitled to
3 any relief whatsoever.

4 **THIRD CAUSE OF ACTION**
5 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

6 47. Answering paragraph 47 of the Complaint, Tsuburaya incorporates
7 herein by reference its responses to the allegations in paragraphs 1 through 46 of the
8 Complaint as though fully set forth herein.

9 48. Answering paragraph 48 of the Complaint, Tsuburaya is without
10 knowledge or information sufficient to form a belief as to the truth or falsity of the
11 allegations set forth therein and, on that basis, denies them.

12 49. Answering paragraph 49 of the Complaint, Tsuburaya denies the truth
13 of the allegations set forth therein.

14 50. Answering paragraph 50 of the Complaint, Tsuburaya denies the truth
15 of the allegations set forth therein.

16 51. Answering paragraph 51 of the Complaint, Tsuburaya denies the truth
17 of the allegations set forth therein, and specifically denies that Plaintiff is entitled to
18 any relief whatsoever.

19 52. Answering paragraph 52 of the Complaint, Tsuburaya denies the truth
20 of the allegations set forth therein, and specifically denies that Plaintiff is entitled to
21 any relief whatsoever.

22 **FOURTH CAUSE OF ACTION**

23 **DECLARATORY RELIEF**

24 **(28 U.S.C. § 2201)**

25 53. Answering paragraph 53 of the Complaint, Tsuburaya incorporates
26 herein by reference its responses to the allegations in paragraphs 1 through 52 of the
27 Complaint as though fully set forth herein.

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54. Answering paragraph 54 of the Complaint, Tsuburaya admits that an actual controversy exists between it and Plaintiff as to the ownership of rights in works pertaining to the superhero Ultraman, and denies the truth of the remaining allegations set forth therein.

55. Answering paragraph 55 of the Complaint, Tsuburaya admits the truth of the allegations set forth therein.

56. Answering paragraph 56 of the Complaint, Tsuburaya denies the truth of the allegations set forth therein, and specifically denies that Plaintiff is entitled to any relief whatsoever.

PRAYER FOR RELIEF

In response to Plaintiff's prayer for relief, Tsuburaya denies that Plaintiff is entitled to any relief whatsoever, whether as prayed for in the Complaint or otherwise.

AFFIRMATIVE DEFENSES

Tsuburaya alleges and asserts the following affirmative defenses in further response to Plaintiff's Complaint, while not agreeing or conceding that it bears the burden of proof or the burden of persuasion on any of these issues, whether in whole or in part. Tsuburaya reserves the right to assert additional defenses, affirmative or otherwise, based on legal theories which may or will be divulged through clarification of the Complaint, through discovery, through change or clarification of the governing law or through further legal analysis of Plaintiff's positions in this litigation.

First Affirmative Defense

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiff has no valid, enforceable or protectable rights or interest in some or all of the alleged copyrights or other matters asserted.

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Third Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the fact that Plaintiff's claims are based on fraudulent documents and/or documents that were procured by fraud.

Fourth Affirmative Defense

Plaintiff's claims are barred in whole or in part by Plaintiff's unclean hands.

Fifth Affirmative Defense

Plaintiff's claims are barred in whole or in part by virtue of Tsuburaya's independent prior creation of the elements and other matters asserted in Plaintiff's Complaint.

Sixth Affirmative Defense

Plaintiff's claims are barred in whole or in part by its lack of standing.

Seventh Affirmative Defense

Plaintiff's claims are barred in whole or in part by the applicable statutes of limitation and the doctrine of laches.

Eighth Affirmative Defense

Plaintiff's claims are barred in whole or in part by the doctrines of waiver, estoppel, acquiescence and abandonment.

Ninth Affirmative Defense

Plaintiff's state-law claims are preempted in whole or in part by the Copyright Act.

Tenth Affirmative Defense

Plaintiff's claims are barred in whole or in part by the doctrines of *res judicata* and collateral estoppel.

Eleventh Affirmative Defense

Plaintiff's claims are barred because the contract pursuant to which Plaintiff asserts rights and seeks relief has been terminated and/or is otherwise invalid under Japanese law.

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Twelfth Affirmative Defense

Plaintiff has failed to mitigate its damages, if any.

Thirteenth Affirmative Defense

Plaintiff's damages, if any, were not caused by Tsuburaya and are otherwise not attributable to the acts or omissions of Tsuburaya.

Fourteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to apply to register the copyrights in some or all of the allegedly infringed works with the United States Copyright Office.

Fifteenth Affirmative Defense

Plaintiff's claims, including, without limitation, Plaintiff's claims based upon alleged extra-territorial acts that occurred outside the United States, are barred in whole or in part by lack of subject matter jurisdiction.

Sixteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrine of illegality and the fact that Plaintiff's actions violate applicable law.

Seventeenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the freedom of speech protected by the First Amendment to the Constitution of the United States.

Eighteenth Affirmative Defense

Plaintiff's requests for punitive and/or enhanced damages are barred in whole and in part because all of Tsuburaya's acts were undertaken in good faith and because Plaintiff fails to plead facts showing an entitlement to an award of punitive and/or enhanced damages.

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COUNTERCLAIMS

For its counterclaims, counterclaimant Tsuburaya Productions Co., Ltd. (“Tsuburaya”) complains and alleges as follows against counterdefendants UM Corporation (“UM”); Ultraman USA, Inc. (“Ultraman USA”); Sompote Saengduenchai (“Sompote”); Golden Media Group, Inc. (“Golden Media Group”); TIGA Entertainment Company, Ltd. (“TIGA”); and DOES 1-10 (collectively, “Counterdefendants”):

NATURE OF THE ACTION

1. In this action, Tsuburaya is the party that has been wronged by Counterdefendants’ unlawful display, reproduction and distribution of its highly creative copyrighted works, and it is thus Tsuburaya that is entitled to relief.

2. There is no dispute that Tsuburaya created multiple films and other original works of authorship based on the Ultraman superhero character, beginning in 1966 (including the works in the “Ultraman Library,” as defined in Paragraph 28 below). There is no dispute that the works in the Ultraman Library are highly original and are subject to copyright protection in the United States. There is no dispute that the works in the Ultraman Library—and the characters depicted therein—have been beloved for decades by fans all around the world.

3. But even given all of these undisputed facts, counterdefendant UM has come to this Court seeking a judicial stamp of approval for Counterdefendants’ multiple acts of copyright infringement relating to the Ultraman Library in the United States, claiming that a purported document dating from 1976—one that has *already been determined* to be a forgery in the courts of at least one foreign country—somehow gives Counterdefendants the right as “licensees” in a fraudulent “chain of title” to unlawfully display, publicly perform, license, create derivative works based on, and otherwise exploit the Ultraman Library in the United States, and further to demand that Tsuburaya refrain from exploiting its *own* intellectual property in the United States.

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10. Tsuburaya is informed and believes, and thereupon alleges, that counterdefendant Golden Media Group is a corporation organized under the laws of the State of California, with its principal place of business in Newhall, California.

11. Tsuburaya is ignorant of the true names and capacities of the counterdefendants who are named herein under the fictitious names DOES 1-10, inclusive. Tsuburaya will seek leave of the Court to amend its counterclaims to allege their true names and capacities when ascertained. Tsuburaya is informed and believes, and thereupon alleges, that each of the fictitiously named DOE counterdefendants is responsible in some manner for the wrongful conduct alleged herein. Tsuburaya is further informed and believes, and thereupon alleges, that each DOE counterdefendant acted in concert and participation with, as agent of or representative for, at the request of, or on behalf of UM, Ultraman USA, Sompote, and/or TIGA and/or Golden Media Group, who were agents of one another at all relevant times. Each charge and allegation alleged herein is, therefore, also hereby alleged against each fictitiously named DOE counterdefendant.

12. Tsuburaya is further informed and believes, and thereupon alleges, that in performing the acts alleged herein, each counterdefendant acted in concert and participation with, as agent or representative for, at the request of, in concert with, or on behalf of every other counterdefendant. Each allegation made herein is, therefore, also made against each and every counterdefendant.

JURISDICTION AND VENUE

13. Tsuburaya's counterclaims arise under the Copyright Act, 17 U.S.C. §§ 106 and 501. Additionally, this Court has federal subject matter jurisdiction over Tsuburaya's counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

14. This Court may exercise personal jurisdiction over counterdefendants Ultraman USA and Golden Media Group because, on information and belief, they are incorporated in, have their principal place of business in, and/or are otherwise citizens or residents of this district. This Court may exercise personal jurisdiction

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1 over counterdefendant UM because UM has filed suit against Tsuburaya in this
2 Court and thereby has submitted to the personal jurisdiction of this Court. This
3 Court may exercise personal jurisdiction over counterdefendants Sompote and
4 TIGA because, on information and belief, they have disseminated and published
5 motion pictures in Los Angeles, targeted customers in this district, and have reached
6 out to businesses in this district to infringe Tsuburaya's intellectual property rights,
7 with actual knowledge that such conduct has caused or is substantially likely to
8 cause injury to Tsuburaya in this district.

9 15. Venue lies in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and
10 1400(a), as Counterdefendants may be found in, are subject to personal jurisdiction
11 in, and a substantial part of the events or omissions giving rise to Tsuburaya's
12 counterclaims occurred in, this district.

13 FACTUAL ALLEGATIONS

14 Tsuburaya and the Ultraman Library

15 16. Founded in 1963 by renowned Japanese filmmaker (and *Godzilla* co-
16 creator) Eiji Tsuburaya, Tsuburaya is a highly-regarded Japanese entertainment
17 company that, as relevant to this action, is engaged in the planning, production,
18 distribution, sales and licensing of motion pictures and television programs and
19 technical services for motion picture and television productions, all on a worldwide
20 basis.

21 17. Beginning in 1964, Tsuburaya created and produced *Ultra Q*, a 28-
22 episode *tokusatsu* (special-effects based) science-fiction television series, executive
23 produced by Eiji Tsuburaya, featuring continuing characters investigating
24 supernatural phenomena like giant monsters, aliens, ghosts and other associated
25 calamities. The series was successful, and originally aired from January 2 to July 3,
26 1966 on the Tokyo Broadcasting System.

1 18. Building off the success of *Ultra Q*, in 1966, Tsuburaya created and
2 released *Ultraman*, a 39-episode follow-up to the television series *Ultra Q* airing on
3 the Tokyo Broadcasting System from July 17, 1966 through April 9, 1967.

4 19. *Ultraman*, which was to become the genesis of a highly successful pop
5 culture phenomenon in Japan and abroad, was the first series to incorporate the
6 enormously popular superhero character “Ultraman.”

7 20. In the *Ultraman* series (as in its follow-up series described below),
8 “Ultraman” is depicted as a red-and-silver member of a team of extra-planetary
9 “Ultramen” heros, with glowing yellow eyes, who takes on a giant form and
10 heroically defends planet Earth against the scourge posed by existential threats from
11 everything from giant monsters to evil space aliens. An image from an episode of
12 the *Ultraman* series—showing Ultraman, on the left, defending against a giant
13 monster, on the right—is depicted below:



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21 21. *Ultraman*’s success was followed by Tsuburaya’s creation and
22 production of *Ultra Seven*, a 49-episode version of the *Ultraman* franchise that aired
23 on Japanese television between October 1, 1967 and September 8, 1968.

24 22. In *Ultra Seven*, Tsuburaya’s “Ultra Seven”—a version of Tsuburaya’s
25 “Ultraman”—was also depicted as a red-and-silver superhero who defended the
26 Earth against extraterrestrial threats. An image of “Ultra Seven” from the *Ultra*
27 *Seven* series is depicted below:

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23. *Ultra Q*, *Ultraman* and *Ultra Seven* were followed by still more Tsuburaya Ultraman hit productions. In 1971, Tsuburaya created and produced *The Return of Ultraman*, a 51-episode Ultraman series that aired from 1971 to 1972 on the Tokyo Broadcasting System and followed the heroic efforts of Tsuburaya’s “New Ultraman” or “Ultraman Jack,” who—supervised and often assisted by Tsuburaya’s “Ultraman” and “Ultra Seven”—is also depicted in a substantially similar red and silver suit taking on a giant form to fight monsters and aliens on planet Earth. An image of “Ultraman Jack” is depicted below.



24. The next chapter in Tsuburaya’s Ultraman series was *Ultraman Ace*, a 52-episode version of the Ultraman series airing on the Tokyo Broadcasting System from April 7, 1972 to March 30, 1973. In *Ultraman Ace*, Tsuburaya’s “Ultraman,” “Ultra Seven,” “Ultraman Jack,” and “Ultraman Ace” defend the Earth against Yapool, an alien mastermind who sought to conquer the planet with experiments and super weapons. An image of Tsuburaya’s “Ultraman Ace” is depicted below:

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25. In 1973, Tsuburaya created, produced and released *Ultraman Taro*, the next installment in the Ultraman series, which aired in 53 episodes on the Tokyo Broadcasting System from April 6, 1973 through April 5, 1974. In *Ultraman Taro*, “Ultraman Taro” joined Tsuburaya’s “Ultraman,” “Ultra Seven,” “Ultraman Jack,” and “Ultraman Ace” to defeat enemies that included monsters and aliens threatening planet Earth. “Ultraman Taro” brought a series of improved weapons to the Ultraman series. An image of Tsuburaya’s Ultraman Taro is depicted below:



26. In 1973, Tsuburaya supplemented its Ultraman success—and celebrated its tenth anniversary—with its creation and production of the *Jumborg Ace* series, another *tokusatsu* television series, which was comprised of 50 episodes airing on the Japanese Mainichi Broadcasting system from January 17 to December 29, 1973. *Jumborg Ace* followed the efforts of “Jumborg Ace,” a giant cyborg, as he defended the Earth against extraterrestrial threats. An image of “Jumborg Ace” is below.



27. *Ultra Q, Ultraman, Ultra Seven, The Return of Ultraman, Ultraman Ace, Ultraman Taro, and Jumborg Ace*—and the fearless characters depicted therein, including “Ultraman,” “Ultra Seven,” “New Ultraman/Ultraman Jack,” “Ultraman Ace,” “Ultraman Taro” and “Jumborg Ace”—were and remain wildly popular both in Japan and abroad, including in the United States.

28. Tsuburaya’s original Ultraman works and characters have inspired and continue to inspire a generation of derivative Ultraman works by Tsuburaya that remain extremely popular in Japan and the United States, as well as elsewhere. They include television programs, films, animated programs, children’s programs, television specials, books and even video games. Tsuburaya has created works based on the Ultraman characters and stories that are specifically intended for U.S. or other foreign audiences, such as a motion picture called “Ultraman—The Adventure Begins,” and a television series called “Ultraman: Towards the Future.” All the Ultraman works and characters created by Tsuburaya are collectively referred to herein as the “Ultraman Library.”

29. The Ultraman Library consists of original works of authorship created and owned by Tsuburaya. Prior to filing its counterclaims in this action, Tsuburaya obtained copyright registration in and/or filed applications with the United States Copyright Office to register the copyrights in a number of works contained in the Ultraman Library, including *Ultraman—The Adventure Begins* (Registration No. PA 351-884); *Ultraman—Towards the Future* (Registration Nos. PA 571-679, PA 571-680, PA 571-684, PA 571-685, PA 571-716, PA 571-717, PA 571-718, PA 571-719, PA 571-720, PA 571-721, PA 571-722, PA 571-723, and PA 571-724); and all

1 episodes in the series of *Ultra Q*, *Ultraman*, *Ultra Seven*, *The Return of Ultraman*,
2 *Ultraman Ace*, *Ultraman Taro*, and *Jumborg Ace* (applications for registration of
3 which were filed in the United States Copyright Office on September 9 and 10,
4 2015, and remain pending).

5 **Counterdefendants' Infringement of the Ultraman Works**

6 30. In or about 1973, Tsuburaya and Chaiyo Productions ("Chaiyo")—a
7 Thai entity that Tsuburaya is informed and believes, and thereupon alleges, was and
8 is controlled by counterdefendant Sompote—co-created and released *Jumborg Ace*
9 & *Giant*, a *tokusatsu* science fiction film that depicted Tsuburaya's "Jumborg Ace"
10 teaming up with a giant stone idol from Thailand against Tsuburaya's "Jumborg
11 Ace" enemies.

12 31. In or about 1974, Tsuburaya and Chaiyo co-created and released *The 6*
13 *Ultra Brothers vs. the Monster Army*, a *tokusatsu* science fiction film that depicted
14 Tsuburaya's "Ultraman," "Ultra Seven," "Ultraman Jack," "Ultraman Ace," and
15 "Ultraman Taro" teaming up with "Hanuman," a fusion of a Thai deity and young
16 boy, to fight (and eventually defeat) evil monsters who threatened the Earth's
17 existence.

18 32. It would eventually become clear that counterdefendant Sompote—
19 seeing the success of Tsuburaya's Ultraman Library—would not be satisfied with
20 his authorized involvement in co-producing *Jumborg Ace & Giant* and *The 6 Ultra*
21 *Brothers vs. the Monster Army* with Tsuburaya. Tsuburaya is informed and
22 believes, and thereupon alleges, that Sompote and/or those affiliated with him
23 falsified a document claiming to have been dated in or about 1976 purporting to
24 grant Sompote certain copyright and/or trademark rights in certain works contained
25 in the Ultraman Library as an exclusive licensee in all territories except Japan (the
26 "1976 Document").

27 33. Using the fraudulent 1976 Document to justify a global campaign of
28 unlawful profiteering and wholesale copyright infringement of the Ultraman

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1 Library, Sompote and his affiliated entities have already tried—and failed—to use
2 the 1976 Document to erase Tsuburaya’s claims to the copyrights in the Ultraman
3 Library in other countries. For example, Sompote’s claims based on the 1976
4 Document were soundly rejected by the Thai Supreme Court in 2008, which refused
5 to recognize the 1976 Document and rejected Sompote’s and his affiliated entities’
6 claims of infringement based thereon.

7 34. Tsuburaya is informed and believes, and thereupon alleges, that
8 Sompote was charged and later convicted of perjury in Thailand based on his usage
9 of the 1976 Document in Thai proceedings. Tsuburaya is informed and believes,
10 and thereupon alleges, that in or about June 2014, Sompote was found guilty in the
11 first instance of perjury, sentenced to two years in prison, and fined 14,000 baht
12 (Thai currency) for his use of the 1976 Document in Thai proceedings, after which
13 time the Thai court ordered the production of the original of the 1976 Document.

14 35. Despite these setbacks, and despite losing his claims in foreign venues,
15 Tsuburaya is informed and believes, and thereupon alleges, that Sompote’s baseless
16 efforts to profit from Tsuburaya’s creativity and erase Tsuburaya’s copyrights have
17 now reached American shores. Specifically, Tsuburaya is informed and believes,
18 and thereupon alleges, that Sompote and/or his co-counterdefendants have continued
19 to use the 1976 Document to create an elaborate and fraudulent “chain of title”
20 implicating extensive acts of copyright infringement in the United States.

21 36. Tsuburaya is informed and believes, and thereupon alleges, that
22 Sompote first transferred his purported interest in the 1976 Document through an
23 individual named Perasit Saengduenchai to counterdefendant UM, an affiliate of
24 Sompote, which is using these rights to unlawfully grant purported licenses to the
25 Ultraman Library in the United States, China, Hong Kong, Taiwan, and Malaysia,
26 and develop derivative characters based on the Ultraman Library in all of these
27 countries.

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1 37. Tsuburaya is informed and believes, and thereupon alleges, that
2 counterdefendant UM submitted fraudulent applications to the United States
3 Copyright Office to register four works in the Ultraman Library.

4 38. Tsuburaya is informed and believes, and thereupon alleges, that
5 counterdefendants Sompote and/or UM are creating a motion picture based on the
6 Ultraman Library for distribution in China, Asian countries other than Japan, and the
7 United States.

8 39. Tsuburaya is informed and believes, and thereupon alleges, that
9 counterdefendant UM has purported to use counterdefendant TIGA to further
10 unlawfully license Tsuburaya's Ultraman Library in the United States to other
11 companies, including counterdefendant Golden Media Group and DOES 1-10, and
12 that UM, TIGA, Golden Media Group and DOES 1-10 are working together to
13 unlawfully publicly display, publicly perform, license and otherwise exploit the
14 Ultraman Library in the United States and in this district, including through
15 YouTube, motion pictures, licensing agreements, and other violations of
16 Tsuburaya's intellectual property rights.

17 40. Tsuburaya is informed and believes, and thereupon alleges, that in or
18 before October of 2014, counterdefendants UM and/or Golden Media Group
19 unlawfully licensed episodes from Tsuburaya's Ultraman Library to one or more
20 third parties so that those episodes could be uploaded to YouTube. At or about the
21 same time, Tsuburaya notified the third parties of the fact that Tsuburaya is the sole
22 copyright owner of the Ultraman Library, a fact that Counterdefendants disputed
23 and continue to dispute based on the 1976 Document.

24 41. Tsuburaya is informed and believes, and thereupon alleges, that in or
25 about November 2013, counterdefendant Sompote released a book comprised of
26 images and text in the United States under the title of "Ultraman Forever," including
27 multiple images and characters ripped directly from the Ultraman Library, and at the
28 same time, traveled to Los Angeles for the purpose of unlawfully claiming

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1 ownership of and otherwise unlawfully publicly displaying, publicly performing,
2 licensing and exploiting the Ultraman Library. Tsuburaya is informed and believes,
3 and thereupon alleges, that at or around this time, Sompote announced in Los
4 Angeles, in reliance on the 1976 Document, that he was given a license to the
5 Ultraman Library outside of Japan.

6 42. Tsuburaya is informed and believes, and thereupon alleges, that on or
7 about May 10, 2015—at or around the time counterdefendant UM brought this
8 action—Sompote held an event in Los Angeles at which he announced the
9 formation of counterdefendant Ultraman USA to exploit the Ultraman Library in the
10 United States. At the event, counterdefendant Sompote announced that he would be
11 using counterdefendant Ultraman USA (and, presumably, other counterdefendants)
12 to release *Ultra Q*, *Ultraman*, *Ultra Seven*, *Return of Ultraman*, *Ultraman Ace*,
13 *Ultraman Taro* and *Jumborg Ace*—in short, a substantial part of the Ultraman
14 Library—on Blu-Ray disc in the United States. The event featured numerous
15 depictions of the Ultraman Library in plain violation of Tsuburaya’s reproduction,
16 public display, public performance and derivative works rights.

17 43. Tsuburaya is further informed and believes, and thereupon alleges, that
18 counterdefendants UM, Sompote, Ultraman USA and Golden Media Group are
19 presently engaged in other or further violations of Tsuburaya’s reproduction, public
20 display, public performance and derivative works rights in the Ultraman Library in
21 the United States, including through uploading images or videos taken from the
22 Ultraman Library on the Internet and on YouTube, negotiating for the production of
23 and producing motion pictures in the United States, creating derivative works based
24 on the Ultraman Library in the United States (including toys and other merchandise)
25 and making profits on all of the above-referenced activity.

26 44. Contrary to Counterdefendants’ allegations, at no point in time has
27 Tsuburaya transferred ownership of, or licensed, the Ultraman Library to
28 Counterdefendants. Accordingly, without authorization, Counterdefendants have

1 distributed, reproduced, publicly displayed and publicly performed the Ultraman
2 Library, and continue to do so. Such ongoing activity constitutes clear copyright
3 infringement.

4 45. Tsuburaya brings its counterclaims to put a stop to Counterdefendants'
5 ongoing infringing infringement of the Ultraman Library.

6 **FIRST COUNTERCLAIM FOR RELIEF**

7 (Copyright Infringement against all Counterdefendants)

8 (17 U.S.C. §§ 106 *et seq.* and 501)

9 46. Tsuburaya repeats and realleges each and every allegation above as if
10 fully set forth herein.

11 47. The Ultraman Library consists of original, creative works that
12 constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101 *et*
13 *seq.* At all relevant times, Tsuburaya has owned all applicable right, title and
14 interest in and to these works, and Tsuburaya has applied to the United States
15 Copyright Office for and/or obtained registration of a number of them (collectively,
16 the "Copyrighted Works"), which registrations constitute *prima facie* evidence of
17 the validity of Tsuburaya's copyrights and of the facts stated in the certificates.

18 48. Counterdefendants have infringed and are continuing to infringe the
19 Copyrighted Works, including by copying, distributing, publicly displaying and
20 publicly performing the Ultraman Library without Tsuburaya's authorization.
21 Counterdefendants have thus violated and are violating Tsuburaya's exclusive rights
22 under 17 U.S.C. § 106. On information and belief, Counterdefendants have also
23 engaged in contributory and vicarious infringement of Tsuburaya's Copyrighted
24 Works. Tsuburaya is informed and believes, and thereupon alleges, that
25 Counterdefendants' infringements have been deliberate and willful.

26 49. As a direct and proximate result of Counterdefendants' infringement,
27 Tsuburaya has suffered, and will continue to suffer, actual damages. Tsuburaya is
28 informed and believes, and thereupon alleges, that Counterdefendants have also

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1 realized unjust profits, gains and advantages as a proximate result of their
2 infringements. Tsuburaya is entitled to its actual damages and any gains, profits and
3 advantages obtained by Counterdefendants as a result of their acts of infringement.
4 Alternatively, at Tsuburaya's election, it is entitled to an award of the maximum
5 statutory damages as permitted by the Copyright Act, 17 U.S.C. § 504(c).

6 50. Tsuburaya has no adequate remedy at law for the injuries currently
7 being suffered, and the additional injuries that are threatened, by Counterdefendants'
8 infringements. Counterdefendants will continue to engage in their wrongful conduct
9 and Tsuburaya will continue to suffer irreparable injury that cannot be adequately
10 remedied at law unless defendants are enjoined from engaging in any further such
11 acts of infringement. Accordingly, Tsuburaya is entitled to an injunction restraining
12 Counterdefendants from engaging in any further such acts in violation of the United
13 States copyright laws, 17 U.S.C. § 502.

14 **SECOND COUNTERCLAIM FOR RELIEF**

15 (Declaratory Relief against all Counterdefendants)

16 51. Tsuburaya repeats and realleges each and every allegation above as if
17 fully set forth herein.

18 52. Tsuburaya, on the one hand, and Counterdefendants, on the other hand,
19 actively dispute, and an actual controversy exists as to, the rights and obligations of
20 the parties as to the Copyrighted Works, including the Ultraman Library, that were
21 created by Tsuburaya.

22 53. Tsuburaya believes that it is and remains the exclusive owner of any
23 and all rights in the Copyrighted Works and that Counterdefendants have no right to
24 distribute, reproduce, display or create derivative works from these works.
25 Tsuburaya is informed and believes, and thereupon alleges, that Counterdefendants
26 dispute all of this, and do so based on the 1976 Document.

27 54. Accordingly, Tsuburaya seeks a declaratory judgment that (1)
28 Tsuburaya is the exclusive owner of any and all rights in the Copyrighted Works,

1 and Counterdefendants have no rights to distribute, reproduce, display or create
2 derivative works from these works; (2) the 1976 Document is of no force or effect;
3 and (3) Tsuburaya has no obligations to Counterdefendants.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Tsuburaya prays for and requests that the Court enter
6 judgment for Tsuburaya by:

7 1. Awarding Tsuburaya all damages that it has sustained or will sustain by
8 reason of Counterdefendants' conduct and all profits that Counterdefendants have
9 derived from such conduct, or in lieu thereof, such statutory damages as provided by
10 law;

11 2. Granting injunctive relief restraining Counterdefendants from directly
12 or indirectly violating Tsuburaya's rights under the Copyright Act, including by
13 further distributing or purporting to license any works in the Ultraman Library or
14 otherwise infringing Tsuburaya's exclusive rights in the Copyrighted Works;

15 3. Declaring that (1) Tsuburaya is the exclusive owner of any and all
16 rights in the Copyrighted Works, and Counterdefendants have no rights to distribute,
17 reproduce, display or create derivative works from these works; (2) the 1976
18 Document is of no force or effect; and (3) Tsuburaya has no obligations to
19 Counterdefendants.

20 4. Awarding Tsuburaya its costs of suit and reasonable attorneys' fees, as
21 well as pre-judgment and post-judgment interest; and

22 5. Granting all such further and additional relief, in law or in equity, to
23 which Tsuburaya may be entitled or which the Court deems just and proper.
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1 DATED: September 11, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

4 By /s/ Daniel C. Posner

5 Daniel C. Posner

6 Attorneys for TSUBURAYA
7 PRODUCTIONS CO. LTD.

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DEMAND FOR JURY TRIAL

Tsuburaya hereby demands a jury trial of all issues in Plaintiff's claims and Tsuburaya's counterclaims that are triable to a jury.

DATED: September 11, 2015 QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ Daniel C. Posner
Daniel C. Posner
Attorneys for TSUBURAYA
PRODUCTIONS CO. LTD.

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